

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTONIO MASSIE,)	1:00-cv-5248 OWW LJO P
)	
Plaintiff,)	ORDER ADOPTING MAGISTRATE
)	JUDGE'S FINDINGS AND
v.)	RECOMMENDATIONS
)	
RICHARD EARLY, et al.,)	
)	
Defendants.)	
)	
)	

This is a prisoner civil rights case brought under 42 U.S.C. § 1983 for alleged deliberate indifference to Plaintiff's serious medical needs in violation of the Eighth Amendment.

On August 31, 2005, the Magistrate Judge filed Findings and Recommendations recommending the motion to dismiss by Defendants for failure to exhaust allegedly available administrative remedies be denied and that the motion for summary adjudication on Plaintiff's claims against Defendant Early be granted. Plaintiff timely filed objections and the Court has conducted a *de novo* review pursuant to the provisions of 28 U.S.C. § 636(b).

The Magistrate Judge has accurately analyzed the exhaustion issue under prevailing Ninth Circuit precedent. There is no reason to question the accuracy of that analysis.

1 As to the summary adjudication claim against Warden Early,
2 Plaintiff has provided no evidence whatsoever of admissible
3 medical testimony that shows any knowledge on the part of
4 Defendant Early of a serious medical need or a failure to respond
5 to such a need. Nor is there any expert testimony that would
6 relate any action of the Warden to any medical condition
7 complained of by Plaintiff.

8 At most, Plaintiff shows he had one contact with the Warden
9 in which he advised the Warden that he had Hepatitis C and needed
10 a certain type of medical treatment which was allegedly
11 unavailable at the North Kern State Prison. Although assuming,
12 *arguendo*, drawing every inference in favor of Plaintiff and
13 against the non-moving party, that the Warden recognized a need
14 for follow-up medical attention, the Warden specifically advised
15 Plaintiff that the matter was a medical one and that Plaintiff
16 needed to have a physician diagnose Plaintiff's medical condition
17 relevant to any request for transfer of institution.

18 Plaintiff submits no evidence that the Warden is the proper
19 individual in the prison hierarchy to address a medical transfer
20 request to, or that there was any breach of duty on the part of
21 the Warden in referring Plaintiff to a medical doctor for further
22 review, analysis, and recommendation.

23 There is no reason to question the accuracy of the analysis
24 of the recommendation that the summary adjudication motion of
25 Defendant Early be granted.

26 For all the reasons stated above, IT IS ORDERED:

27 1. The Findings and Recommendations of the Magistrate
28 Judge are ADOPTED;

2. Defendant's motion for summary adjudication on
Plaintiff's claims against Defendant Richard Early is GRANTED.

DATED: January 6, 2006.

/s/ OLIVER W. WANGER

Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

dlp/massie v. early order